

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEGATUS, et al.,

Plaintiffs,

v.

Case No. 12-12061

KATHLEEN SEBELIUS, et al,

Defendants,

ORDER REQUIRING CLARIFICATION

On August 28, 2013, the court issued an “Order Setting Deadlines” which directed Plaintiff to file a motion for preliminary injunction and set an expedited briefing schedule on that motion. Pursuant to that order, Defendants’ response brief is due Friday, October 4, 2013.

On October 1, 2013, Defendants filed a motion for a stay of briefing on Plaintiff’s motion for preliminary injunction “until Congress has restored appropriations to the Department [of Justice].” (Pg ID 396.) Defendants rely on 31 U.S.C. § 1342, which states, “An officer or employee of the United States Government . . . may not accept voluntary services for . . . government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.” However, Defendants do not say whether the attorney responsible for this case has been, or is about to be, furloughed.

According to the Department of Justice (DOJ) Contingency Plan, found on the Department’s home page:

Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life

or the protection of property. Litigators will need to approach the courts and request that active cases, except for those in which postponement would compromise to a significant degree the safety of human life or the protection of property, be postponed until funding is available. *If a court denies such a request and orders a case to continue, the government will comply with the court's order, which would constitute express legal authorization for the activity to continue. The Department will limit its civil litigation staffing to the minimum level needed to comply with the court's order and to protect life and property.*

U.S. Department of Justice FY 2014 Contingency Plan, [www.justice.gov, http://www.justice.gov/jmd/publications/doj-contingency-plan.pdf](http://www.justice.gov/jmd/publications/doj-contingency-plan.pdf) (last visited Oct. 2, 2013) (emphasis added) (the rendering of this URL contains spaces). Assuming the above-quoted language governs this matter, it appears that a court order will result in continuation of the case without delay. Accordingly,

IT IS ORDERED that Defendants are DIRECTED to file a statement of clarification not later than **October 3, 2013**, addressing the following questions:

- (1) Has the attorney responsible for this case been furloughed?
- (2) Does the DOJ Contingency Plan language quoted above govern this matter? If the language governs, do Defendants dispute the court's interpretation? If Defendants contend that another source of authority governs this matter, they are advised to include it in their statement of clarification.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 3, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522